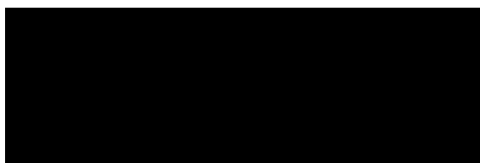




OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

October 29, 2015



Sergeant Craig Gelande
City of Silvis Police Department
1040 First Avenue
Silvis, Illinois 61282

RE: FOIA Request for Review – 2015 PAC 35548

Dear [REDACTED] and Sergeant Gelande:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2014)). For the reasons that follow, the Public Access Bureau concludes that the City of Silvis Police Department (Department) did not withhold non-exempt information responsive to [REDACTED] May 23, 2015, FOIA request.

On that date, [REDACTED] submitted a FOIA request to the Department seeking copies of all police, fire, and ambulance calls and/or reports for a specific address from March 2007 through May 23, 2015. On May 27, 2015, the Department provided [REDACTED] with responsive records but redacted certain information, asserting that it was highly personal. On June 1, 2015, the Public Access Bureau received the above-captioned Request for Review contesting the extent of the Department's redactions and its withholding of entire records.

On June 11, 2015, the Public Access Bureau sent a copy of the Request for Review to the Department and asked it to provide unredacted copies of the responsive records for our confidential review, together with a detailed explanation of its legal and factual bases for withholding responsive information. On June 21, 2015, this office received those records and the Department's written response asserting that its denial was proper. The Department specifically cited sections 7(1)(b) and 7(1)(c) of FOIA (5 ILCS 140/7(1)(b), (1)(c) (West 2014)). [REDACTED] did not submit a reply.

DETERMINATION

"All records in the custody or possession of a public body are presumed to be open to inspection or copying." 5 ILCS 140/1.2 (West 2014); *see also Southern Illinoisan v. Illinois Department of Public Health*, 218 Ill. 2d 390, 415 (2006). A public body "has the burden of proving by clear and convincing evidence" that a record is exempt from disclosure. 5 ILCS 140/1.2 (West 2014). "When a request for public records is denied on the grounds that the records are exempt under Section 7 of [FOIA], the notice of denial shall ***specify the exemption claimed*** to authorize the denial and the ***specific reasons*** for the denial, including a ***detailed factual basis*** and a ***citation to supporting legal authority***." (Emphasis added.) 5 ILCS 140/9(b) (West 2014).

As a preliminary matter, we note that the Department's May 27, 2015, response to [REDACTED]'s request did not provide a detailed factual basis or supporting legal authority for withholding responsive information, and only alluded to one of the applicable exemptions rather than specifying both of them. We remind the Department to ensure that it complies with section 9(b) of FOIA when it denies any portion of a FOIA request in the future.

Section 7(1)(c) of FOIA

Section 7(1)(c) of FOIA exempts from disclosure "[p]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information." Section 7(1)(c) defines "unwarranted invasion of personal privacy" as "the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information. The disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy."

A public body's contention that the release of information would constitute an unwarranted invasion of personal privacy is evaluated on a case-by-case basis. *Chicago Journeymen Plumbers' Local Union 130, U.A. v. Department of Public Health*, 327 Ill. App. 3d 192, 196 (1st Dist. 2001). The phrase "clearly unwarranted invasion of personal privacy" evinces a strict standard to claim the exemption, and the burden is on the government agency having charge of the record to prove that standard has been met. *Schessler v. Department of Conservation*, 256 Ill. App. 3d 198, 202 (4th Dist. 1994).

Based on our review, the information the Department redacted and withheld pursuant to section 7(1)(c) is exempt from disclosure under that provision. The Department primarily redacted highly personal medical information, the disclosure of which would constitute

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a clearly unwarranted invasion of personal privacy. The public interest is low in the medical information that was redacted, whereas a profound invasion of personal privacy would occur if that information were to be disclosed. *See* Ill. Att'y Gen. PAC Req. Rev. Ltr. 20579, issued April 9, 2013, at 3 ("The Public Access Bureau has previously determined that * * * information pertaining to specific medical conditions or treatments would be an unwarranted invasion of personal privacy.").

Additionally, the Department redacted dates of birth. The Public Access Bureau has consistently determined that the disclosure of dates of birth would constitute a clearly unwarranted invasion of personal privacy. *See, e.g.,* Ill. Att'y Gen. PAC Req. Rev. Ltr. 27345, issued May 19, 2014, at 3.

The Department also redacted information that would identify witnesses who provided information to law enforcement personnel, which this office has consistently found to be permissible pursuant to section 7(1)(c) in order to avoid an unwarranted invasion of personal privacy, if not pursuant to section 7(1)(d)(iv) of FOIA (5 ILCS 140/7(1)(d)(iv) (West 2014)) as information identifying an individual who provided information to a law enforcement agency. *See, e.g.,* Ill. Att'y Gen. PAC Req. Rev. Ltr. 37979, issued October 28, 2015.

Further, the Department redacted information provided to law enforcement personnel by alleged victims of criminal offenses, the disclosure of which would be highly objectionable to a reasonable person. The release of that information would create a potential for further harm to the alleged victims, outweighing any public interest in that information.

Finally, the records that the Department withheld in full all involve domestic incidents in which no individuals were arrested. When no arrests result from an incident involving private individuals (as opposed to public officials) who are not charged with any crime, this office has determined that the subjects' privacy rights outweigh any legitimate public interest in that information. *See, e.g.,* Ill. Att'y Gen. PAC Req. Rev. Ltr. 23355, issued May 16, 2013, at 3 (collecting cases).

Section 7(1)(b) of FOIA

Lastly, section 7(1)(b) of FOIA exempts from disclosure "[p]rivate information, unless disclosure is required by another provision of this Act, a State or federal law or a court order." Section 2(c-5) of FOIA (5 ILCS 140/2(c-5) (West 2014)) defines "private information" as:

unique identifiers, including a person's social security number,
driver's license number, employee identification number, biometric

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identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal email addresses. Private information also includes home address and personal license plates, except as otherwise provided by law or when compiled without possibility of attribution to any person.

To the extent that the Department withheld information that is not exempt from disclosure pursuant to section 7(1)(c), it is exempt from disclosure pursuant to section 7(1)(b) because it constitutes "private information" pursuant to the above definition of that term.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. Please contact me at the Chicago address on the first page of this letter if you have any questions. This letter serves to close this matter.

Very truly yours,

[REDACTED]
JOSH JONES

Supervising Attorney
Public Access Bureau

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